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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 19

CHARLES PAUL, Director of Agriculture of the State of California and STANLEY MOSK, Attorney General, State of California,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Brief of Amicus Curiae

FORREST H. ANDERSON,
Attorney General for the State of Montana.

GEOFFREY L. BRAZIER,
Special Ass't. Attorney General for the State of Montana,
Amicus Curiae

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STATEMENT OF INTEREST OF AMICUS CURIAE

Your Petitioner is the duly elected, qualified and acting Attorney General of the State of Montana, which state administers a milk stabilization act by means of a public agency, and, as such Attorney General, your petitioner appears herein in the interest of the State of Mon-

tana and of the dairy farmers and distributors of said state.

ARGUMENT

The State of Montana is vitally interested in the judicial solution of the question presented in Appellants' Jurisdictional Statement of Facts herein, and for that reason, the State of Montana urges the Honorable Supreme Court of the United States to hear oral argument and receive briefs on the merits in the above-entitled case.

The State of Montana has a milk stabilization act similar to that of the State of California wherein the minimum price of fluid milk to dairy farmers, as well as minimum retail and wholesale prices for fluid milk and cream products are regulated by a public governmental agency of the state.

Because Montana is a relatively unpopulated state, sales of fluid milk and cream products to Federal agencies and institutions therein consume a substantial portion of the milk supplied by dairy farmers in the state. Presently, sales to the Malmstrom Air Force Base at Great Falls, Montana, the Veterans Administration Hospital at Fort Harrison, Montana, and to various radar installations in the northern part of the state consume approximately one million pounds of milk a month. This consumption represents a monthly income to dairy farmers of more than Fifty-three Thousand Dollars ($53,000.00) per month under present state administrative control. With anticipated

completion of current construction projects of an Air Force base near Glasgow, Montana, expansion of the VA hospital at Fort Harrison, Montana, and a complex of intercontinental ballistic missile sites, it is anticipated that consumption by Federal agencies and institutions in Montana, will soon double its present quantity.

Montana has had administrative milk control since 1935 in the interest of protecting and promoting public welfare and eliminating unfair and demoralizing trade practices in the fluid milk industry of the state. Revised Codes of Montana, 1947, 27-402.

The effect of the Order of United States District Court for the Northern District of California, dated and entered March 27, 1961, in the case of United States of America v. Charles Paul, Director of Agriculture, et al., will be to usurp upon the jurisdiction of the public milk control agency of the State of Montana to such an extent as to render it ineffective throughout the state and thereby to defeat the purpose of said agency which the Legislature of the State of Montana, in its wisdom, created to protect the welfare of the public of the State.

Absence of control over the prices of milk sold by Federal institutions and agencies makes inroads upon the otherwise stabilized milk marketing structure of the State in two ways: 1. The disparity in retail prices between milk sold on Federal reservations and milk sold in adjacent state market areas has a powerful impact upon the retail

price for fluid milk and cream products not sold on Federal property, forcing down the retail prices of such products and causing a loss in the marketing thereof which is passed back to producers. Prices established by the State agency are based upon the costs of ordinarily efficient dealers marketing milk in the area. When substantial price competition below the duly established minimums exists, it has a tendency to eliminate not only all but the most efficient distributors from business, but also the dairy farmers who supply them.

2. The Federal institutions already consume such a large supply of milk that economic pressure has been put upon producers supplying the milk to those institutions, causing the producers economic loss. Increased pressure on these producers will force prices to them down far enough to put them out of business, thereby jeopardizing the supply of milk to the entire state.

It further appears to your petitioner that the March 27, 1961, order of the U. S. District for the Northern District of California establishes an unfortunate precedent for the State of Montana in that it appears to permit Federal encroachment upon subject matters heretofore exclusively under the regulation, jurisdiction and control of public agencies of the State of Montana, to-wit: establishment of sanitary and quality regulations of milk and other food products.

CONCLUSION

It is submitted that the questions presented by the appeal of the instant case are important to state and federal relations not only of the State of California, but of the State of Montana, and call for a resolution by this Court.

Respectfully submitted,

FORREST H. ANDERSON,
Attorney General for the State of Montana.

GEOFFREY L. BRAZIER,
Special Ass't. Attorney General for the State of Montana.

Amicus Curiae